

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEAN CLAIRE MARKELL,

CV. 08-752-PK

Plaintiff,

ORDER

v.

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST,

Defendant.

MARSH, Judge

Magistrate Judge Paul Papak previously filed a Findings and Recommendation in this case denying defendant's motion for summary judgment on February 10, 2009. I issued an order adopting those Findings and Recommendation on February 27, 2009. On March 9, 2009, defendant filed a second motion for summary judgment on the ground that the undisputed facts in the record foreclosed the possibility that plaintiff could establish a claim under the Age Discrimination in Employment Act.

On May 8, 2009, defendant filed a motion for reconsideration of the court's denial of its first motion for summary judgment, in light of the Supreme Court's issuance of 14 Penn Plaza LLC v.

Pyett, - U.S. -, 129 S.Ct. 1456 (2009), which potentially impacted the decision. On May 13, 2009, I ordered defendant to file additional briefing in support of its renewed first motion for summary judgment.

On September 14, 2009 Judge Papak filed his Findings and Recommendation denying defendant's first motion for summary judgment and granting its second motion for summary judgment. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Plaintiff timely filed objections to the Findings and Recommendation and defendant timely filed a response. I have, therefore, given the file of this case a *de novo* review.

Having thoroughly reviewed the record and legal arguments presented by plaintiff, I conclude there is no reason to disturb the Magistrate's Findings and Recommendation. I find no error. Accordingly, I ADOPT the Findings and Recommendation (#63) of Magistrate Judge Papak dated September 14, 2009 in its entirety. Defendant's renewed first Motion for Summary Judgment (#14) is

DENIED and Defendant's second Motion for Summary Judgment on Established Factual Record (#34) is GRANTED.

IT IS SO ORDERED.

DATED this _15_ day of OCTOBER, 2009.

_/s/ Malcolm F. Marsh_____
Malcolm F. Marsh
United States District Judge